No. 00-130

Supreme Court, U.S.
FILED
AUG 14 2000
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

ALLEN LUEBBERS,
Superintendent, Potosi Correctional Center,
Petitioner,

v.

LEAMON WHITE,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

MOTION TO PROCEED *IN FORMA PAUPERIS*

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Attorneys for Respondent

Respondent, Leamon White, by and through his counsel appointed below, respectfully moves the Court, pursuant to Rule 39 of the United States Supreme Court Rules, for leave to proceed *in forma pauperis*. In support of this motion, Mr. White states:

1. Mr. White is an inmate on Missouri's death row. He is indigent.

2. The matter before this Court is a petition for writ of certiorari filed by Petitioner, Allen Luebbers, Superintendent of the Potosi Correctional Center, seeking review of a decision of the Eighth Circuit Court of Appeals in Mr. White's favor on appeal of his federal habeas corpus action.

3. Both the District Court and the Court of Appeals below appointed the undersigned counsel to represent Mr. White pursuant to the Criminal Justice Act of 1964, 18 U.S.C. § 3006A.

Respectfully submitted,

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE

QUESTION PRESENTED FOR REVIEW

Petitioner misstates the Question Presented in this case. The Question Presented should be framed as follows:

DID THE EIGHTH CIRCUIT COURT OF APPEALS CORRECTLY HOLD THAT THE MISSOURI SUPREME COURT'S TWO ARBITRARY LIMITATIONS ON ITS PREVIOUSLY ESTABLISHED STATE LAW REMEDY FOR ADDRESSING SITUATIONS WHERE COURT-APPOINTED COUNSEL ABANDONED POST-CONVICTION MOVANTS DURING POST-CONVICTION PROCEEDINGS, CREATED AND APPLIED FOR THE FIRST TIME IN LEAMON WHITE'S CASE, AND USED TO BAR HIS FEDERAL CONSTITUTIONAL CLAIMS IN STATE COURT, WERE NEITHER FIRMLY ESTABLISHED, REGULARLY FOLLOWED, NOR READILY ASCERTAINABLE STATE PROCEDURAL RULES, AND THUS, DID NOT ACT AS ADEQUATE STATE GROUNDS FOR BARRING MR. WHITE'S CONSTITUTIONAL CLAIMS IN FEDERAL COURT?

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STATEMENT OF THE CASE

The Petitioner's statement of the case fails to convey the gross injustice that plagued Respondent Leamon White throughout the proceedings in state court:

I. MR. WHITE IS ACTUALLY INNOCENT; MURDER CONVICTION RESULTED FROM INEFFECTIVE ASSISTANCE OF COUNSEL

Mr. White is not guilty of the murder of Don Wright.[1] He is the victim of mistaken identity. No physical evidence linked him to the murder. This was a case based solely on eyewitness identification. And while two witnesses identified Mr. White as the assailant known as Suspect Number Two, both were extremely unreliable.

Both witnesses were under the influence of crack cocaine at the time of the crime. Neither identified Mr. White close in time to the murder. One did so five months later in a suggestive lineup only after police showed her a photograph of Mr. White before the lineup, and despite having admitted that the only suspect that she failed to get a good look at was Suspect Number Two. The other did not identify Mr. White until over two years later on the eve of trial, after (i) repeatedly being shown the videotape of the lineup, (ii) never being able to identify Mr. White, and (iii) identifying someone else in the lineup as Suspect Number Two, only to be told by police that he identified the wrong man. On the Saturday before trial, one prosecutor met with this witness and showed him the videotape again. The witness still could not identify Mr. White. The next day both prosecutors met with the witness and he provided a tentative identification, which he repeated at trial.

---

[1] Mr. White was convicted of first degree murder. Petitioner is wrong when he asserts that Mr. White was also convicted of three counts of armed criminal action and two counts of first degree assault. (Petition 4.)

Mr. White's trial counsel, who subsequently surrendered his law license, failed to conduct even a rudimentary investigation of this case: he failed to depose, or even interview, the eyewitnesses, which he was entitled to do under the Missouri Rules of Criminal Procedure. (In light of the weak identifications, had he conducted depositions, he could have effectively challenged the witnesses' credibility on cross-examination during the trial.) He failed to investigate or present a credible alibi defense, which would have placed Mr. White at home in bed at the time of the crime. And, most important, he failed to investigate, interview and present witnesses who would have testified that a Jamaican drug dealer named A.J. Constantine was Suspect Number Two. (The other men convicted of this murder, Suspect Number One and Suspect Number Three,[2] both serving prison sentences for this crime, but neither sentenced to death, have admitted that Mr. Constantine was Suspect Number Two.)

Mr. White has an extremely convincing case of actual innocence; however, the Court of Appeals declined to reach that issue because it lifted the procedural bar that was preventing Mr. White from bringing his claims in federal court on the basis of the independent and adequate state ground doctrine. (Appendix to Petition 6 n. 4.)

II. POST-CONVICTION ABANDONMENT

The only mechanism available to Mr. White to raise his claims for the ineffective assistance of his trial counsel was through Missouri's post-conviction procedure. That procedure was set forth in Rule 29.15 of the Missouri Rules of Criminal Procedure.

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[2] Suspect One was Roger Buckner. In a separate trial, he was convicted of first degree murder and sentenced to life in prison. Suspect Three was Cleveland Ford. He pled guilty to second degree murder and received a 15-year sentence. Neither testified against Mr. White at trial.

The Rule 29.15 Post-Conviction Procedure

At the time of Mr. White's conviction, the procedure for obtaining post-conviction relief was to file a motion under Rule 29.15. The Rule 29.15 post-conviction proceeding took place simultaneous to the direct appeal. A 29.15 movant had 30 days to file a motion to vacate his sentence. The rule did not provide for appointment of counsel to file the initial motion, and if a movant was indigent, he would have to do so *pro se*. In the *pro se* motion he had to raise all grounds for relief that he knew of, along with a factual basis in a verified motion. The court was required to appoint counsel to prepare an amended motion. Appointed counsel had 30 days from the order of appointment to prepare an amended motion. Counsel could move for one 30-day extension, and thus, as a practical matter, had 60 days to prepare an amended motion, if one was warranted. The amended motion had to be verified as well. Rule 29.15(e) required that

> [c]ounsel shall ascertain whether sufficient facts supporting the grounds asserted in the motion and whether the movant has included all grounds known to him. . . . If the motion does not assert sufficient facts or include all grounds known to the movant, counsel shall file an amended motion that sufficiently alleges the additional facts and grounds.

The time and verification requirements of the rule were deemed jurisdictional; the motion court did not have discretion to excuse them except in one instance – if appointed counsel abandoned the movant, failing to fulfill the duties set forth in Rule 29.15.

Post-Conviction Counsel Abandoned Mr. White

It is without dispute that Mr. White was abandoned by his post-conviction counsel, an abandonment so serious that the Missouri Supreme Court requested that "the chief Disciplinary Counsel investigate and determine whether any ethical considerations or disciplinary rules were

broken." State v. White, 873 S.W.2d 590, 597 (Mo. 1994) (en banc). (App. 124.) The chronology of events that led to the Court's conclusion is as follows:

(1) On August 17, 1989, Mr. White files his *pro se* motion pursuant to Rule 29.15 of the Missouri Rules of Criminal Procedure, substituting a thumbprint for verification because a notary was not available (App.114).

(2) On September 25th, the motion court appoints the Public Defender's Office (App.114).

(3) The Public Defender hires Larry Pace, a contract defender; he files for an extension of time (App. 115).

(4) On November 9th, 14 days before the date the amended motion is due, the Public Defender's Office requires that Mr. Pace withdraw, and assigns the case to Joe Locascio (App. 115).

(5) Mr. Locascio visits Mr. White on November 14th, nine days before the motion is due, and asks him to sign a blank verification (App. 115, 120).

(6) On November 27th, three days after the amended motion is due, Mr. Locascio files an amended motion, and requests a 30-day extension to file a second amended motion; the court grants the extension (App. 115).

(7) On August 1, 1990, the motion court denies relief on White's claims without a hearing (App. 116).

(8) Mr. White appeals this decision, along with the direct appeal from his conviction, to the Supreme Court (App.116).

(9) The Supreme Court remands to determine whether Mr. White had been abandoned (App. 116).

(10) On August 28, 1992, the motion court determines no abandonment, and that both the first and second amended motions were filed out of time and are a nullity because the *pro se* motion was not verified (App. 116).

(11) Mr. White appeals to the Supreme Court again and it finds the abandonment (App. 124-25).

The Missouri Supreme Court relaxed its rigid verification rule and held that, under the circumstances, the *pro se* motion was properly verified, but that both the first and second amended motions were filed out of time. It then determined that Mr. White was abandoned by (i) the Public Defender's Office's decision to switch counsel, (ii) Mr. Pace's withdrawal without leave of court, and (iii) Mr. Locascio's failure to file a timely amended motion.

> Based on the record, we conclude that Mr. White was abandoned by the decision of the public defender's office to change defendant's counsel fourteen days before the end of the sixty day period for filing the Rule 29.15 amended motion . . ., by his first appointed counsel's withdrawal without leave of court, and by both his first and second counsel's failure to file a timely amended motion. We find that no action or inaction by White contributed to the delayed filing.
>
> An attorney should not withdraw so close to the filing date that the second counsel has insufficient time to meet all the requirements of Rule 29.15. By his own admission, defendant's second counsel did not have enough time to file a timely amended motion after he entered his appearance. Moreover, the conduct of the public defender's office is at least questionable in removing defendant's first appointed counsel fourteen days prior to the filing date, especially since it was done without leave of the motion court.

State v. White, 873 S.W.2d 590, 597 (Mo. 1994) (en banc) (emphasis added). (App. 124-25.)

Abandonment Remedy

Up until Mr. White's case came before the Missouri Supreme Court in 1994, abandonment by counsel (i) excused the failure to comply with the filing requirements of Rule 29.15 and (ii) entitled the movant to new counsel in order to proceed anew. Luleff v. State, 807 S.W.2d 495 (Mo.

1991) (en banc); Sanders v. State, 807 S.W.2d 493 (Mo. 1991) (en banc); State v. Bradley, 811 S.W.2d 379 (Mo. 1991) (en banc).[3]

Abandonment Remedy Limited for First Time in Mr. White's Case

As a remedy for the abandonment, however, the Missouri Supreme Court did not allow Mr. White to proceed anew with new 29.15 counsel, as he requested, but instead reinstated the first amended motion, which had been thrown together in just 14 days, and remanded to the Circuit Court for it to insure that it had ruled on all claims in the first amended motion. This was a hollow gesture. On remand, the Circuit Court once again denied relief without a hearing and the Missouri Supreme Court affirmed on February 25, 1997, White v. State, 939 S.W.2d 887 (Mo. 1997) (App. 132), finding that Mr. White's motion was worded improperly in that it did not explain in sufficient detail the substance of the ineffective assistance of trial counsel claims that he raised.[4]

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[3] For instance, in Bradley, appointed counsel filed a 29.15 motion on the day it was due, but it was not signed or verified by the movant. Counsel also filed a motion for an extension of time to file an amended motion. The court granted the extension, but counsel did not file the amended motion. The Supreme Court declared the original motion that counsel filed a nullity because it was not signed or verified. It then held that the "teaching of Sanders and Luleff" required that,

> Before dismissing the petition, the motion court is obliged to confirm that counsel complied with Rule 29.15(e) and, if counsel did not comply and such non-compliance is not attributable to the movant, new counsel should be appointed who will proceed anew according to the rule ... The procedure described in Luleff and Sanders must be followed here.

Bradley at 385. (Emphasis added.)

[4] Because of its holding that the new rules relating to the abandonment remedy were not independent and adequate state grounds, the Court of Appeals did not reach the issue of whether the Missouri Supreme Court's strict wording requirement was an independent and adequate state ground. (App. 6 n.4.) Although Mr. White's motion contained names of witnesses, referenced provisions of the United States Constitution that had been violated, and stated factual detail about prejudice, the Missouri Supreme Court focused on his counsel's specific use of the words "failed to adduce"

The Supreme Court justified its decision not to allow Mr. White to start anew on two grounds. First, it created a new distinction under the abandonment remedy between a movant being abandoned on the timing of the filing of the motion and a movant being abandoned on content of the motion. This distinction had never been identified or applied before.

Second, it created a new limitation based on Mr. White's signing the blank verification. His lawyer, Mr. Locascio, had had Mr. White sign the required verification to the first amended motion before the motion was completed, when Mr. Locascio met with Mr. White at the prison for the first time nine days before the amended motion was due. Mr. Locascio was a notary and verified the

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in his description of the ineffective assistance of counsel claims as the basis for denying relief on procedural grounds:

> In every post-conviction case in may be truthfully said that there are innumerable witnesses whose favorable testimony on a myriad of issues was not adduced by trial counsel. The subtle wording "counsel failed to adduce" suggests what the witness might say without directly stating that they were available and would have testified favorably to movant, if called. To declare such a pleading to be sufficient would permit a post-conviction lawyer to sandbag the State and the motion court with numerous unsubstantiated claims of deficient performance of trial counsel in failing to "adduce" testimony from witnesses. . . . Meanwhile, the post-conviction movant and the post-conviction counsel could truthfully say they had made no misrepresentation of fact to the court, which would subject them to sanctions. . . or [discipline] pursuant to the Rules of Professional Conduct.

White, 939 S.W.2d at 896-97 (App. 143-44). Of course, the motion containing this "subtle wording" was the one that was hurriedly thrown together in the 14 days that existed between counsel taking over the case and expiration of the filing deadline. Regardless of that, the Court's rationale borders on the absurd in its (i) assumption that post-conviction counsel's choice of language was designed to mislead the motion court and sandbag the state and (ii) failure to give the language in Mr. White's motion its plain meaning and clear implication. It is a chilling example of the obstacles people sentenced to death in Missouri face in trying to assert valid claims of constitutional error.

signature himself at a meeting with Mr. White. Mr. Locascio's office was in Kansas City, Missouri, and Mr. White was imprisoned in Potosi, Missouri, on the other side of the state, and with only nine days to go, knowing that it was impossible to prepare the motion, get it notarized at the prison and put it back in the mail, this was all Mr. Locascio could think of in order to try to comply with the rule.[5] The Court said that by Mr. White signing the verification in blank, "he was an active participant in falsely verifying a document that had not yet been written. . ., [and] waived all his rights to complain about [the motion's] content." State v. White, at 595. (App.120.) As a result, the Court said he waived the remedy for abandonment going to the content of his motion. Had Mr. White's lawyer not instructed him to sign the verification, he would have been allowed to proceed anew.

ARGUMENT:
REASONS FOR DENYING THE WRIT

Petitioner has wrongly framed the question presented by the Eighth Circuit Court of Appeals' decision in this case, and this Court should deny the petition. First, the Eighth Circuit's decision, which applies the doctrine of independent and adequate state grounds to the unique facts of Mr. White's federal habeas case, does not raise an issue that warrants Supreme Court review. Second, the Eighth Circuit applied the independent and adequate state grounds doctrine correctly. And third, the Eighth Circuit did nothing that in any way creates a right to effective assistance of post-conviction counsel.

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[5] The Missouri Bar later reprimanded Mr. Locascio for this notarization.

I. THE COURT SHOULD DENY THE PETITION FOR WRIT OF CERTIORARI BECAUSE THE QUESTION PRESENTED FAILS TO SATISFY THE REQUIREMENTS FOR SUPREME COURT REVIEW

The Eighth Circuit's decision in this case is a straightforward application of this Court's well established independent and adequate state ground doctrine, as explained, for example, in Ford v. Georgia, 498 U.S. 411, 423-4 (1991) and Harris v. Reed, 489 U.S. 255, 262 (1989), to the particular and unique facts of Mr. White's case. The Petitioner phrases the question presented in a way that attempts to portray the Eighth Circuit's decision as something it is not – a departure from Supreme Court precedent requiring this Court's review and correction. However, the real and only question presented by the Eighth Circuit's decision is whether it applied the independent and adequate state ground doctrine properly to the facts of the case.

Petitioner cannot show that the Court of Appeals improperly stated the doctrine of independent and adequate state grounds. The Court of Appeals explained the doctrine as follows:

> Federal review of a habeas petition is barred when a state court dismisses or rejects a prisoner's claims on independent and adequate state grounds unless a petitioner can demonstrate either (1) cause and prejudice or (2) actual innocence. Coleman v. Thompson, 501 U.S. 722, 750 (1991). Procedural default on a claim under state law may constitute an independent and adequate state ground, Harris v. Reed, 489 U.S. 255, 262 (1989), but only if the state procedural rule is firmly established, regularly followed, and readily ascertainable. Ford v. Georgia, 498 U.S. 411, 423-4 (1991). The underlying principle is that "failure to follow state procedures will warrant withdrawal of a federal remedy only if those procedures provided the habeas petitioner with a fair opportunity to seek relief in state court." Easter v. Endell, 37 F.3d 1343, 1347 (8th Cir. 1994).

(App. 7.)

This is a correct statement of the law on the doctrine of independent and adequate state grounds' application to a federal habeas case. Petitioner's asserted error is simply that the Court

of Appeals misapplied the doctrine to the facts and particular procedural rules at issue in the case. This issue does not warrant the granting of a Petition for Certiorari. Rule 10 of the Rules of the United States Supreme Court states: "A petition for certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law." Nothing about this case warrants deviation from the Court's standard practice.

II. THE COURT SHOULD DENY THE PETITION FOR WRIT OF CERTIORARI BECAUSE THE EIGHTH CIRCUIT PROPERLY APPLIED THE INDEPENDENT AND ADEQUATE STATE GROUND DOCTRINE TO THE FACTS OF THIS CASE

In a precise analysis of the Missouri procedural rules at issue, the Eighth Circuit determined that, as applied to Mr. White during his state post-conviction proceedings, the new rules were neither "firmly established nor readily ascertainable" (App. 7), the critical prerequisite for allowing a state procedural default to act as an independent and adequate ground to bar federal review of constitutional claims. See Ford v. Georgia, 498 U.S. at 423-24. As a result, Mr. White's procedural default was excused, and the Court of Appeals remanded to the District Court to review the constitutional claims Mr. White raised in his Petition for Writ of Habeas Corpus.

The Petitioner takes issue with the Court of Appeal's analysis, but that analysis was correct. The Court of Appeals examined Missouri's post-conviction procedure under Rule 29.15. The Rule had strict timing and verification requirements that, if violated, resulted in the dismissal of a post-conviction claim. When movant was appointed counsel, it was counsel's duty to make sure these requirements were met. "Although there was no right to effective assistance of counsel, Missouri provided a remedy, as a matter of state law, where appointed counsel 'abandoned' his client by completely failing to perform these statutory duties." (App. 4-5.) This remedy was called the "abandonment" remedy, the concept being that when court-appointed attorneys failed to meet the

timing and verification requirements of the rule, they had abandoned their clients. The remedy for abandonment was appointment of new counsel and the right to proceed anew. See, Luleff v. State, 807 S.W.2d 495 (Mo. 1991) (en banc); Sanders v. State, 807 S.W.2d 493 (Mo. 1991) (en banc).

It is without dispute that the Missouri Supreme Court held that Mr. White was abandoned; in fact, it found the triple abandonment discussed above. The Missouri Supreme Court, however, failed to provide a meaningful remedy for this triple abandonment. The Court of Appeals held that the reason Mr. White did not receive a meaningful remedy is that the Missouri Supreme Court created two limitations on the abandonment remedy "newly introduced in Mr. White's own case." (App. 7.) One of the new limitations created to deny Mr. White a remedy was a distinction, never made before, between whether an abandonment went to the timing versus the content of the motion. (App. 8.) The other new limitation was that Mr. White's signing of a "blank" verification at his attorney's instruction was deemed to be a waiver of the remedy for abandonment. (App. 9.)

The Court of Appeals determined that these new limitations "denied [Mr. White] a fair opportunity to seek relief in this case because the procedural rule that barred his second amended petition was neither firmly established nor readily ascertainable." (App. 7.) The Court stated:

> Given the state of the law at the time, Mr. White did not have a fair opportunity to seek relief in this case. Mr. White was presented with a very difficult decision when his attorneys abandoned him: to lose all of his claims in an untimely motion or to sign an improper verification and hope that the motion would at least be timely. The new principles announced by the Missouri Supreme Court in his case were not available to guide him in making that decision. Because these principles were neither readily ascertainable nor firmly established, the procedural default that ensued cannot be considered an adequate state ground to bar federal review.

(App. 10.)

The Court of Appeals made the correct determination.[6]

III. THE COURT SHOULD DENY THE PETITION FOR WRIT OF CERTIORARI BECAUSE THE EIGHTH CIRCUIT'S DECISION IN NO WAY CREATES A RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL IN POST-CONVICTION PROCEEDINGS

The state's excited assertions to the contrary, the Eighth Circuit's decision in no way implicates Coleman v. Thompson, 501 U.S. 722 (1991), and has nothing to do with creating any sort of right to effective assistance of counsel during state post-conviction proceedings. The Eighth Circuit has firmly and consistently followed this Court's precedent in rejecting such a right. Burns v. Gammon, 173 F.3d 1089 (8th Cir. 1999); Nolan v. Armontrout, 973 F.2d 615, 617 (8th Cir. 1992).

Nothing in the Court of Appeals decision indicates in any way that the Court recognized a right to effective assistance of post-conviction counsel. To the contrary, the Court specifically recognized that Mr. White had "no right to effective assistance of post-conviction counsel," but that

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[6] The Petitioner characterizes the Court of Appeals' decision as a failure to enforce the timing and verification requirements of Rule 29.15. (Petition 21, 24.) The Petitioner, however, has failed to recognize or has chosen to ignore that this case is not about the application of Rule 29.15 filing deadlines or verification requirements, but rather, it is about the application of a state court-created exception to Rule 29.15 called the abandonment remedy. Whether the Petitioner wants to admit it or not, this abandonment remedy was as much a part of Rule 29.15 as the timing and verification requirements themselves. And no reason exists for a federal court to consider Rule 29.15's filing requirements, but ignore the abandonment remedy which created valid exceptions to those requirements. It was all part and parcel of one state-created post-conviction scheme. When the Missouri Supreme Court chose not to follow the established scheme, the Court of Appeals was not barred by the newly created rules. See, Ford v. Georgia, at 423-24 (federal courts need not "apply a state procedural rule, even though the rule appeared in retrospect to form part of a consistent pattern of procedures . . .only a firmly established and regularly followed state practice may be interposed by a State to prevent subsequent review by this Court of a federal constitutional claim") (internal citations and quotation marks omitted); see also, Del Vecchio v. Illinois Dep't of Corrections, 31 F.3d 1363, 1381(7th Cir. 1994) (en banc), cert. denied, 514 U.S. 1037 (1995) (state supreme court's resolution of claim, although based on state law, was not "adequate" ground because court had "never [before] faced the question . . . [and its] resolution in Del Vecchio's case was novel").

Missouri had created a post-conviction procedure that had created an abandonment remedy. (App. 4.) It was application of this remedy to Mr. White's case that was the subject of the independent and adequate state ground analysis. While the Court of Appeals recognized that Mr. White was abandoned by post-conviction counsel, it did not address whether such counsel provided effective assistance.

Significantly, it was not even the Court of Appeals that determined that the abandonment had occurred. It was the Missouri Supreme Court that found that the abandonment had occurred. This fact completely removed the Court of Appeals from any assessment of post-conviction counsel's conduct. Thus, the Petitioner's assertion, in its Question Presented for Review, that the Court of Appeals concluded "that the state law remedy for post-conviction counsels' noncompliance with a state rule *did not allow adequate representation* in the collateral proceeding" (emphasis added) is simply wrong. The Court of Appeals concluded no such thing. This was not the subject of its analysis.

The subject of the Court of Appeals' analysis was whether the Missouri Supreme Court failed to follow previously established rules, or created new rules, in applying the abandonment remedy to Mr. White's undisputed abandonment under Missouri law. Necessarily, the Missouri abandonment remedy only applied when post-conviction counsel did or failed to do something deemed to be abandonment; however, under neither Missouri law nor the Court of Appeals' analysis is abandonment tantamount to ineffective assistance of counsel under the Sixth Amendment.

Petitioner simply fails to recognize this clear distinction, and his attempt to invoke Coleman v. Thompson is the result of confusion. The Court of Appeals did not hold that Mr. White was entitled to effective post-conviction counsel.

CONCLUSION

No reason exists for the Court to grant the petition for a writ of certiorari in this case. The Court of Appeals applied well established Supreme Court precedent on the doctrine of independent and adequate state grounds in rendering its decision. Petitioner's attempt to portray the Court of Appeals' decision as one holding that a criminal defendant is entitled to effective assistance of post-conviction counsel has absolutely no basis in law or fact. A full and fair reading of the Court of Appeals' decision demonstrates that it created no such right. Instead, it is a well reasoned application of the doctrine of independent and adequate state grounds applied to the unique facts of Mr. White's case.

Mr. White respectfully requests that Petitioner's petition for writ of certiorari be denied.

Respectfully Submitted,

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